UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1925 August Term, 1995

(Argued: September 15, 1995 Decided:(October 6, 1995)

Docket No. 95-7102

GICC CAPITAL CORP.,

*Plaintiff-Appellant,*

v.

TECHNOLOGY FINANCE GROUP, INC., ANDREW GRAHAM, DENNIS WILLIAMSON, GRAHAM & WILLIAMSON, CREATIVE RESOURCES, INC., TFF, INC., APPLE LEASING, INC., JAMES T. PIERCE, WALTER H. PRIME, GORDON LOCKE, TFG ACQUISITION CORP., and ARTHUR KRONENBERG,

*Defendants-Appellees.*

Before: VAN GRAAFEILAND, MESKILL, and CABRANES, *Circuit Judges.*

Appeal from an order of the United States District Court for the District of Connecticut (Warren W. Eginton, *Judge*), granting appellees' motions to dismiss for failure to state a claim. The district court held that appellant had failed to establish that appellees' conduct constituted continuous criminal activity or posed a threat thereof, and that appellant had therefore not alleged a "pattern of racketeering activity" under the Racketeer Influenced and Corrupt Organizations Act. The court dismissed appellant's remaining state law claims for lack of any basis for supplemental jurisdiction.

Affirmed.

RICHARD P. SWANSON, Reid & Priest, New York, New York (Pamela C. Tames, of counsel) for *plaintiff-appellant*.

EUGENE R. SCHEIMAN, Baer, Marks & Upham, New York, New York (David P. Atkins, Zeldes, Needle & Cooper, Bridgeport, Connecticut, Anthony De Toro, New York, New York, of counsel) for *defendants-appellees* Andrew Graham, Dennis Williamson, Graham & Williamson, Gordon Locke, Creative Resources, Inc., TFF, Inc., Apple Leasing, Inc., James T. Pierce, Walter H. Prime.

FREDERIC S. URY, Ury & Moscow, Westport, Connecticut, for *defendants-appellees* Technology Finance Group, Inc., TFG Acquisition Corp., Arthur Kronenberg.

JOSÉ A. CABRANES, *Circuit Judge:*

Plaintiff GICC Capital Corp. ("GICC") brought this action against two groups of defendants that allegedly participated in the looting of assets from defendant Technology Finance Group, Inc. ("TFG"). TFG defaulted on a promissory note issued to GICC in settlement of unrelated litigation. GICC claims that the defendants engaged in a series of schemes designed to defraud GICC by permitting TFG to escape its obligation under the note. GICC alleges violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968 (1968), and various state law fraud claims. The district court, adopting a ruling of Magistrate Judge Arthur H. Latimer, granted defendants'

motions to dismiss for failure to state a claim on August 26, 1993, finding that GICC lacked standing under RICO.[1] We reversed and remanded. *GICC Capital Corp. v. Technology Finance Group, Inc.*, 30 F.3d 289 (2d Cir. 1994). On remand, the district court granted defendant's renewed motions to dismiss plaintiff's RICO claim. The court concluded that plaintiff had failed to demonstrate that defendants' conduct amounted to continuous criminal activity or a threat thereof, and that plaintiff had therefore not alleged a "pattern of racketeering activity" under RICO. The district court also dismissed plaintiff's state law claims, finding no basis for the exercise of supplemental jurisdiction. On appeal, GICC contends that the district court erred in adopting an overly narrow view of RICO's "continuity" requirement.

## I. Facts

For purposes of this decision, we take the facts alleged in plaintiff's amended complaint to be true. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). GICC holds a $500,000 promissory note issued by defendant TFG as part of a March 1990 settlement of unrelated litigation involving TFG and a principal of GICC. TFG defaulted on the note in December 1992. The amount due on the note stands at $407,021.07, with *per diem* interest of $110.66 since December 28, 1992.

Defendant Creative Resources Inc. ("CRI") is a holding company that conducts its business through a group of subsidiaries. CRI was controlled, during the times relevant, by defendants Andrew Graham, Gordon Locke, James T. Pierce, Walter H. Prime, Dennis Williamson, and Graham & Williamson (a partnership of defendants Graham and Williamson). Until February 1991 defendant TFG was owned by TFF, Inc., a CRI subsidiary. TFG was in the business of leasing computer equipment. TFG would borrow funds, purchase equipment, lease the equipment to an initial end-user, and

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[1] By the some order, the district court dismissed plaintiff's federal securities claim. Plaintiff did not appeal this ruling.

direct the rental payments to the lender. At the same time, it would "sell" the equipment to an investor, who would reap certain tax benefits from formal ownership. The investor, in turn, would lease the equipment back to TFG for a term longer than the term of TFG's lease with the initial end-user. For the remainder of the longer term, TFG would re-lease the equipment to a second end-user. Because TFG's loan would already be paid off, the second end-user rental payments would be available as profits, which TFG would share with the investor. TFG and the investor would thus each hold a "residual" interest—that is, rights to a portion of the second end-user rental income. TFG apparently held some of these residual interests, while others were held by its subsidiary, Apple Leasing Co.

GICC's complaint alleges that CRI and those who controlled it (1) at some time between June 1989 and March 1990 caused Apple Leasing to be transferred from TFG to CRI for no consideration, permitting CRI rather than TFG to benefit as Apple's parent from the income to which Apple was entitled under residual interests; (2) in March 1990, fraudulently induced GICC to accept a $500,000 note from TFG as part of a settlement agreement; (3) caused money to funnel out of TFG and into CRI by permitting Apple, rather than TFG, to repurchase investors' residual interests at a profit; (4) in February 1991, caused the transfer of TFG to defendant Arthur Kronenberg and his company, defendant TFG Acquisition Corp., for nominal consideration; and (5) at an unspecified time, shifted assets from CRI to an overseas subsidiary of CRI. GICC alleges that these transfers were designed to defraud TFG's creditors, including GICC.

## II. Discussion

Section 1962 of RICO outlaws (a) the use of income "derived . . . from a pattern of racketeering activity" to acquire an interest in, establish, or operate an enterprise engaged in or affecting interstate commerce; (b) the acquisition of any interest in or control of such an enterprise "through a pattern of racketeering activity"; (c) the conduct or participation in

the conduct of such an enterprise' affairs "through a pattern of racketeering activity"; and (d) conspiring to do any of the above. GICC alleges that all of the defendants violated § 1962(c), and that all of the defendants except TFG and TFG Acquisition violated § 1962(a) and § 1962(b). Under any prong of § 1962, a plaintiff in a civil RICO suit must establish a "pattern of racketeering activity." The plaintiff must plead at least two predicate acts, *see* § 1961(5), and must show that the predicate acts are related and that they amount to, or pose a threat of, continuing criminal activity, *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). The district court concluded that the plaintiff had failed to satisfy the so-called "continuity" requirement.

In *H.J. Inc.*, the Supreme Court outlined the basic contours of the continuity requirement as follows:

> "Continuity" is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition . . . A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct. Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the *threat* of continuity is demonstrated.

492 U.S. at 241-42 (emphasis in original) (citation omitted). Thus, a plaintiff in a RICO action must allege either an "open-ended" pattern of racketeering activity (*i.e.*, past criminal conduct coupled with a threat of future criminal conduct) or a "closed-ended" pattern of racketeering activity (*i.e.*, past criminal conduct "extending over a substantial period of time"). The district court concluded that GICC failed to allege either a closed- or open-ended continuity here. We agree.

*A. Open-Ended Continuity*

Our cases assessing whether a threat of continuity exists have looked first to the nature of the predicate acts alleged or to the nature of the enterprise at whose behest the predicate acts were performed. *See, e.g., United States v. Aulicino*, 44 F.3d 1102, 1111 (2d Cir. 1995); *United States v. Kaplan*, 386 F.2d 536, 542 (2d Cir. 1989), *cert. denied*, 493 U.S. 1076 (1990); *United States v. Indelicato*, 865 F.2d 1370, 1383-84 (2d Cir.) (en banc), *cert. denied*, 493 U.S. 811 (1989); *Beauford v. Helmsley*, 865 F.2d 1386, 1391 (2d Cir.) (en banc), *vacated and remanded*, 492 U.S. 914, *adhered to on remand*, 893 F.2d 1433, *cert. denied*, 493 U.S. 992 (1989). Thus, an inherently unlawful act performed at the behest of an enterprise whose business is racketeering activity would automatically give rise to the requisite threat of continuity. *Aulicino*, 44 F.3d at 1111. Where the nature of conduct or the enterprise does not by itself suggest that the racketeering acts will continue, courts must look to other external factors. *Kaplan*, 886 F.2d at 542.43. Thus, in *Beauford*, we found allegations that defendants had engaged in a one-time mailing of 8,000 copies of fraudulent documents in connection with a condominium conversion plan sufficient to plead a pattern of racketeering activity, where there was a basis to infer that similar mailings would occur in the future. *Beauford*, 865 F.2d at 1392. Similarly, in *Azrielli v. Cohen Law Offices*, 21 F.3d 512 (2d Cir. 1994), we concluded that a series of fraudulent sales of securities over at least one year, coupled with fact that the defendants "apparently ha[d] been trying to continue to sell" securities, permitted a jury to find a RICO pattern. *Id.* at 521.

GICC does not allege that the nature of the defendants' conduct itself gives rise to a threat of continuity. Rather, GICC attempts to establish a threat of continuity by alleging that (1) the defendants would have continued to loot TFG if not for the fact that all available funds had already been looted; and (2) CRI would have continued to transfer money overseas had GICC not commenced litigation. We find plaintiff's first argument unpersuasive. Even if we assume that

defendants' scheme was designed to deprive TFG of its assets, it is clear that the scheme was *inherently* terminable. It defies logic to suggest that a threat of continued looting activity exists when, as plaintiff admits, there is nothing left to loot. For example, the predicate acts alleged in connection with the repurchases of residual investor interests—that is, mail and wire fraud—*could not* have continued once the pool of investor interests available for repurchase was exhausted. Indeed, plaintiff's claim that all available funds had been looted itself suggests that CRI had completed its wave of repurchasing. As for plaintiff's second claim, we find it entirely speculative. We conclude that GICC's allegations are not sufficient to suggest a threat of continuity.

*B. Closed-Ended Continuity*

We find similarly unpersuasive GICC's allegations that a closed-ended pattern of racketeering activity exists. Since *H.J. Inc.*, in which the Supreme Court made clear that closed-ended continuity can only be shown through conduct occurring over "a *substantial* period of time," 492 U.S. at 242 (emphasis supplied), we have found closed-ended continuity only twice. In *Jacobson v. Cooper*, 882 F.2d 717 (2d Cir. 1989), we concluded that predicate acts occurring over "a matter of years," from approximately 1980 to 1988, satisfied the continuity rerequirement. *Id.* at 720. Similarly, in *Metromedia v. Fugazy*, 983 F.2d 350 (2d Cir. 1992), *cert. denied*, 113 S. Ct. 2445 (1993), we found erroneous a jury instruction that "a few weeks or months" might constitute "a substantial period of time," but upheld a RICO verdict in favor of the plaintiff because the predicate acts in question spanned at least two years. *Id.* at 369; *see also Procter & Gamble Co. v. Big Apple Indus. Bldgs., Inc.*, 879 F.2d 10, 18 (2d Cir. 1989) (concluding, prior to Supreme Court's decision in *H.J. Inc.*, that allegations of predicate acts occurring over "period of nearly two years" as part of a five-part fraudulent scheme were sufficient to plead pattern of racketeering activity), *cert. denied*, 493 U.S. 1022 (1990).

Plaintiff contends that the district court erroneously characterized the alleged activities of the various defendants as part of "a single short-lived scheme," and notes that, in any event, RICO does not require that a plaintiff demonstrate multiple schemes or goals. In *Indelicato*, we concluded that Congress did not mean "to exclude from the reach of RICO multiple acts of racketeering simply because they achieve their objective quickly or because they further but a single scheme." 865 F.2d at 1383; *see also Beauford*, 865 F.2d at 1391. That multiple schemes are not required in all circumstances does not mean that the number and nature of the schemes alleged by a plaintiff in a given case are entirely irrelevant. Rather, a plaintiff must provide some basis for a court to conclude that defendants' activities were "neither isolated nor sporadic." *Id.* We find that no such basis exists here.

Since *H.J. Inc.*, other courts of appeals—as well as lower courts in this circuit — have attempted to measure whether closed ended continuity exists by weighing a variety of non-dispositive factors, including, *inter alia*, the length of time over which the alleged predicate acts took place, the number and variety of acts, the number of participants, the number of victims, and the presence of separate schemes. *See, e.g., Vicom v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 780 (7th Cir. 1994); *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1412-13 (3d Cir.), *cert. denied*, 501 U.S. 1222 (1991); *Polycast Technology Corp. v. Uniroyal, Inc.*, 728 F. Supp. 926, 948 (S.D.N.Y. 1989).

We first examine the temporal aspect of plaintiff's claim. GICC alleges a two-year period of racketeering activity; GICC variously identifies the starting point of that period as (1) the individual CRI defendants' takeover of CRI (in June 1989); (2) the transfer of Apple Leasing Co. to CRI (at an unspecified time between June 1989 and March 1990); and (3) the issuance of a promissory note in favor of GICC (in March 1990). Because GICC does not allege any racketeering activity in connection with the CRI defendants' takeover of CRI, the takeover cannot form the starting point of defendants' pattern of racketeering activity. GICC attempts to plead

violations of the mail and wire fraud statutes in connection with the transfer of Apple Leasing from TFG to CRI. However, GICC alleges that the transfer was "fraudulent" in the sense that it was not disclosed to GICC prior to GICC's acceptance of the promissory note. Based on the amended complaint, we cannot conclude that plaintiff has alleged mail and wire fraud in connection with the actual transfer of Apple Leasing from TFG to CRI. We are left, then, with allegations of a pattern of racketeering lasting at most from the time the defendants allegedly induced plaintiff to accept a promissory note in March 1990, until TFG's sale to TFG Acquisitions in February 1991.

As noted above, we have twice found closed-ended continuity since the Supreme Court's decision in *H.J. Inc.*, and in each case the alleged pattern extended for a longer period of time. Those courts of appeals considering the issue have consistently refused to treat predicate acts occurring over a similar (or even longer) period of time a "pattern of racketeering activity" under RICO. *See Vemco, Inc. v. Camardella*, 23 F.3d 129, 134 (6th Cir.) (finding single-victim scheme lasting seventeen months insufficient to show continuity), *cert. denied*, 115 S. Ct. 529 (1994); *Hughes v. Consol-Pennsylvania Coal Co.*, 945 F.2d 594, 611 (3d Cir. 1991) (holding that "twelve months is not a substantial period of time" for purposes of establishing pattern of racketeering activity), *cert. denied*, 504 U.S. 955 (1992); *J.D. Marshall Int'l, Inc. v. Redstart, Inc.*, 935 F.2d 815, 821 (7th Cir. 1991) (concluding that thirteen months is not substantial under RICO); *Menasco v. Wasserman*, 886 F.2d 681, 684 (4th Cir. 1989) (holding that predicate acts with single goal occurring over one-year period do not form pattern); *see also Metromedia*, 983 F.2d at 369 (noting that "[p]eriods of 19 or 20 months . . . have been held sufficient to support a finding of continuity"); *Religious Technology Ctr. v. Wollersheim*, 971 F.2d 364, 366-67 (9th Cir. 1992) (per curiam) (noting that "[w]e have found no case in which a court [of appeals] has held the requirement to be satisfied by a pattern of activity lasting less than a year"). Though an approach giving such weight to the duration of criminal activities alleged in connection with a closed-ended

pattern of racketeering activity is undoubtedly somewhat mechanistic, we believe that it is required to effectuate Congress's intent to target "long-term criminal conduct." *H.J. Inc.*, 492 U.S. at 242, *see id.* at 243 n.4 ("[W]hen Congress said predicates must demonstrate 'continuity' before they may form a RICO pattern, it expressed an intent that RICO reach activities that amount to or threaten long-term criminal activity."); *see also* S. REP. NO. 91-617, at 158 (1969) (explaining pattern requirement); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985) (discussing RICO's legislative history). As the Court suggested in *H.J. Inc.*, continuity is "centrally a temporal concept." 492 U.S. at 242.

Plaintiff provides no other basis for concluding that the defendants' acts satisfy the continuity requirement. The activities alleged involved only a handful of participants. Plaintiff attempts to allege that the defendants' activities affected multiple victims, including investors whose residual interests were purchased at a discount and other creditors. Nevertheless, plaintiff does not identify any other victims, nor state in anything but general terms the nature of their purported injuries. Finally, plaintiff contends that defendants' activities are properly characterized as a "multi-faceted scheme," and that it is settled law in this Circuit that similar activities extending over a similar period of time form a pattern. That is simply not the case. Of the cases the plaintiff cites for this proposition, all but one involved a threat of continuity, *see Azrielli*, 21 F.3d at 521; *Morrow v. Black*, 742 F. Supp. 1199, 1207 (E.D.N.Y. 1990); *Amsler v. Corwin Petroleum Corp.*, 715 F. Supp. 103, 105 (S.D.N.Y. 1989), or a considerably longer period of time, *see Toto v. McMahan, Brafman, Morgan & Co.*, No. 93 CIV. 5894, 1995 WL 46691, at *3 (S.D.N.Y. Feb. 7, 1995); *Constellation Bank, N.A. v. C.L.A. Management*, No. 94 CIV. 0989, 1995 WL 42285, at *2, *3 (S.D.N.Y. Feb. 1, 1995).[2] Only one case arguably supports plaintiff's statement.

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[2] In addition, plaintiff relies on cases not directly discussing the continuity requirement, also distinguishable from the instant case. See *HBE Leasing Corp. v. Frank*, 22 F.3d 41, 43 (2d Cir. 1994) (affirming district

*(Footnote continued)*

*See Polycast*, 728 F. Supp at 926, 948 (finding that allegations of multiple acts of mail and wire fraud and securities law violations over eight-and-a-half month period established RICO pattern). That case was not appealed to this court. In any event, it is sufficient to note that plaintiff's allegations do not present a "complex, multi-faceted conspiracy to defraud executed by numerous officers and stockholders" similar to that which the district court faced in *Polycase*. *See id.*

We are not prepared to conclude that the specific racketeering activities alleged in this case, occurring over less than one year and without a threat of future criminal activity, constitute the sort of "long-term criminal conduct" that Congress sought to target in RICO. Accordingly, the judgement of the district court is affirmed.

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court's finding of RICO liability for three-year scheme); *Turkish v. Kasenetz*, 27 F.3d 23, 27 (2d Cir. 1994) (finding predicate acts in connection with allegations of settlement fraud in 1987 and extortion in 1991); *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1164 (2d Cir.) (finding mail and wire fraud occurring over five-year period), *cert. denied*, 114 S. Ct. 385 (1993).

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**
**UNITED STATES COURT HOUSE**
**40 FOLEY SQUARE**
**NEW YORK 10007**

**GEORGE LANGE III**
**CLERK**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 3rd day of January one thousand nine hundred and ninety-six.

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GICC Capital Corp.

Plaintiff-Appellant

v. Dkt No: 95-7102

Technology Finance

Defendants-Appellees.

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A petition for rehearing containing a suggestion that the action be *reheard* in banc having been filed herein by the appellant GICC Capital Corp.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

**FOR THE COURT:**
**GEORGE LANGE III, CLERK**
***/s/ 1/3/96***
By: Arthur M. Heller,
Administrative Attorney

Administrative Attorney

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

No. 1189 August Term, 1993

Argued: February 24, 1994 Decided: July 11, 1994

Docket No. 93-7982

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GICC CAPITAL CORP.,

Plaintiff-Appellant,

-against-

TECHNOLOGY FINANCE GROUP, INC., ANDREW GRAHAM, DENNIS WILLIAMSON, GRAHAM & WILLIAMSON, GORDON LOCKE, CREATIVE RESOURCES, INC., TFF, INC., APPLE LEASING, INC., JAMES T. PIERCE, WALTER H. PRIME, TFG ACQUISITION CORP., and ARTHUR KRONENBERG,

Defendants-Appellees.

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Before: LUMBARD, VAN GRAAFEILAND, and JACOBS, *Circuit Judges*.

Appeal from a September 2, 1993 judgment of the District of Connecticut, Eginton, *J.*, dismissing federal securities and RICO claims for failure to state a claim, and dismissing state law claims on jurisdictional grounds. Plaintiff accepted a large note from defendant corporation in settlement of prior litigation, and alleged that defendants stripped defendant corporation of its assets and caused the note and settlement to become worthless. The district court held that plaintiff lacked RICO standing because defendants proximately caused injury only to defendant corporation and not to its creditors.

Reversed.

RICHARD P. SWANSON, New York, New York (Reid & Priest, New York, New York, Pamela C. Tames, of counsel), for Plaintiff-Appellant.

FREDERIC S. URY, Westport, Connecticut (Rubenstein and Ury, Westport, Connecticut, of counsel), for Defendants-Appellees Technology Finance Group, Inc., TFG Acquisition Corp., and Arthur Kronenberg.

ANTHONY DeTORO, New York, New York (Baer Marks & Upham, New York, New York, Eugene R. Scheiman; Zeldes, Needle & Cooper, Bridgeport, Connecticut, David P. Atkins, of counsel), for Defendants-Appellees Andrew Graham, Dennis Williamson, Graham & Williamson, Creative Resources, Inc., TFF, Inc., Apple Leasing, Inc., James T. Pierce, Walter H. Prime and Gordon Locke.

LUMBARD, *Circuit Judge*:

GICC Capital Corporation (Capital) appeals from a September 2, 1993 judgment of the District of Connecticut (Eginton, *J.*), dismissing Capital's amended complaint. The district court adopted a June 15, 1993 report of Magistrate Judge Arthur H. Latimer recommending dismissal of Capital's claims. Capital, a New York corporation with its principal place of business in New York City, sued numerous defendants who allegedly participated in the looting of assets

from defendant Technology Finance Group, Inc. (TFG), a Delaware corporation with its principal place of business in Westport, Connecticut. TFG defaulted on a note that it issued to Capital in settlement of an unrelated litigation. Capital alleges that the note's issuance and the looting of TFG were part of a scheme to defraud Capital by escaping the note and settlement obligations. Capital claims that the scheme violated, among other things, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961, 1963. The district court dismissed Capital's RICO claim on the ground that the looting of TFG proximately caused harm only to TFG and not to Capital, and that Capital therefore lacks RICO standing. We reverse.

## I.

For purposes of this decision, we take the allegations of the complaint to be true and construe the complaint in Capital's favor. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). In March 1990, a principal of Capital settled an unrelated litigation with TFG (to which Capital was not a party) by accepting a promissory note from TFG to Capital for $500,000. The note bore interest of 10% from April 1, 1990 through December 31, 1995. No payments were due until January 1, 1991. Accrued interest of $37,500 was added to the principal on January 1, 1992. From January 1, 1991 to December 31, 1991, only monthly interest of $4,166.57 was due. From January 1, 1992 to December 31, 1995, monthly interest plus principal of $17,343.65 was due at the end of each month. Failure to remit any payment within ten days of a due date, and further failure to cure within fifteen days after receipt of written notice from Capital, entitled Capital to accelerate payment and declare the full amount due and payable.

TFG made the first seven interest payments in 1991 and the interest plus principal payments through November 1992. In December 1992, TFG defaulted and Capital declared the full balance due and payable. TFG did not respond. The amount due stands at $407,021.07, with per diem interest of $110.66 since December 28, 1992. TFG allegedly has no prospect of

making payment, but so far has not filed for, or been placed into, bankruptcy.

TFG's business was in "sale-and-leaseback" transactions that took advantage of certain tax provisions in the 1980s. TFG borrowed funds to purchase office computer equipment, leased the equipment to a user, and directed the user's lease payments to the lender as payment on the loan. At the same time, TFG sold the equipment to an investment trust that leased the equipment back to TFG. The trust investors gained depreciation and other tax benefits.

The user leases lasted as long as the terms of the loans that TFG obtained to purchase the equipment. The trust leases lasted longer. When a user lease expired and the loan had been paid off, the equipment would be leased to a second user. The payments by the second user did not have to be directed to a lender, and thus were available as profits, or "residuals." TFG took a share of the residuals and remitted the balance to the investment trust.

TFG increased its profits by repurchasing trust investors' interests for less than the amount of profits due to flow to the investors. It is unclear why trust investors agreed to this. Capital suggests that TFG advised trust investors that their interests were worth very little. Defendant Dennis Williamson states that the trust investors were given "realistic, but conservative" estimates. At any rate, trust investors' interests were repurchased, and TFG collected all of the payments from the corresponding second user leases.

Defendant Creative Resources, Inc. (CRI), a Nevada corporation with its principal place of business in Westport, Connecticut, is a holding company that conducts business through a group of subsidiaries. CRI was controlled, during the times relevant, by defendants Andrew Graham, Dennis Williamson, Gordon Locke, Walter H. Prime, James T. Pierce, and Graham & Williamson (a partnership of defendants Graham and Williamson).

Until at least 1989, CRI owned TFG through defendant TFF, Inc. (TFF), a DelaWare corporation having its principal place of business in Westport, Connecticut and itself a holding company. TFG owned a subsidiary, defendant Apple Leasing, Inc. (Apple), also a Delaware corporation with its principal place of business in Westport, Connecticut. A straight line of ownership thus existed from CRI to TFG to Apple.

Capital alleges that a series of transactions by the defendants from 1989 to 1991 fraudulently stripped TFG of its assets and inevitably resulted in TFG's default on the note. First, at some time after June 1989, the corporations were reorganized so that Apple became a subsidiary of CRI and not of TFG. The straight line became a triangle. The alienation of Apple deprived TFG of second-user lease payment income to which Apple held rights and from which TFG would have benefitted as Apple's parent.

Second, CRI caused subsequent repurchase transactions to be made by Apple instead of TFG, or to be made by TFG and immediately sold to Apple at no profit to TFG. CRI facilitated the repurchases by loaning the necessary funds to Apple rather than TFG. CRI even caused TFG to act as Apple's collection agent, for no compensation. CRI couched the transfer of residuals as repayment of the intracorporate loans. The result was a stream of profits that flowed through Apple to CRI, bypassing TFG and its creditors. CRI thus used Apple to siphon TFG's business opportunities and leave TFG an empty shell incapable of meeting its obligations. These transfers favored CRI at the expense not just of Capital and other creditors, but of trust investors, who were not paid in some cases. Capital alleges that over $2 million in residuals were thus diverted.

Third, CRI transferred over $1 million of the improperly diverted funds to one of its overseas subsidiaries: TALK Software Ltd. in London. Capital alleges that the purpose of the overseas transfer was to frustrate the collection of TFG's debt.

Fourth, in February 1991, CRI caused TFF to sell the remains of TFG to a new shell company, defendant TFG Acquisition Corp. (TFG Acquisition), a New Jersey corporation with its principal place of business in Newark, New Jersey, for the nominal sum of $10,000. TFG Acquisition is owned by defendant Arthur Kronenberg, who had previously acted as TFG's attorney. As part of the transaction, CRI forgave $1.1 million owed by TFG to CRI, CRI gave TFG rights to $300,000 in residuals, and TFG released CRI from all claims TFG might have had against CRI. TFG's officers and directors resigned. TFG thus was cast adrift without recourse against CRI, CRI's subsidiaries or CRI's controlling persons. CRI, meanwhile, was relieved of the burdens of holding an insolvent subsidiary.

Capital supports its allegations by reference, among other things, to CRI's Securities and Exchange Commission filings which allegedly contain admissions and evidence of the diversions and evidence of the amount diverted and the amount transferred overseas.

In September 1991, Capital filed this suit in the District of Connecticut. The complaint contained claims under federal law for securities fraud and RICO violations, and under state law for fraudulent conveyance and unfair trade practices. Although TFG had not yet defaulted on the note (the default came in December 1992), Capital alleged that defendant TFG was being stripped of its assets by other defendants, and that default was imminent.

In October 1991, defendants filed motions to dismiss the complaint. They asserted that Capital failed to state a federal claim and that the district court should decline jurisdiction over the remaining state law claims. In December 1991, the district court referred the motions to the magistrate judge for report and recommendation. In February 1992, the magistrate judge recommended that the motions be granted because TFG had not yet defaulted on the note and the suit therefore was "premature and speculative." Later that month, Capital filed

objections to the recommendation. Defendants filed oppositions to Capital's objections.

In August 1992 , the district court heard argument on the pending recommendation and objections, and reserved decision. Meanwhile, in December 1992 TFG defaulted on the note. In January 1993, the district court referred the matter back to the magistrate judge for reconsideration.

In March 1993 , Capital filed an amended complaint to allege and add a state law claim for TFG's default. The amended complaint seeks compensatory relief in the amount of the unpaid principal of $407,021.07 under federal securities law and state default and fraudulent conveyance law; actual, treble and punitive damages in the amount of at least $1,500,000 under RICO and state unfair trade practices law; punitive damages of at least $1,000,000; and prejudgment interest, costs and fees.

After a hearing, the magistrate judge in June 1993 recommended that the motions be granted. He reasoned that Capital: (1) failed to state a federal securities claim because the note was not a security; and (2) lacked standing under RICO because the amended complaint's allegations of looting did not describe "specific acts directed at Capital," but only acts directed at TFG with respect to which Capital's harm was "necessarily incidental . . . and derivative" and thus inadequate to establish the proximate cause required for RICO standing. He also recommended that the district court decline jurisdiction over the remaining state law claims.

In July 1993, Capital filed objections to the recommendation. Defendants filed oppositions to Capital's objections. In August 1993, the district court adopted the magistrate judge's recommendation and dismissed the amended complaint.

## II.

Capital appeals the dismissal of its RICO claim. It asserts that the district court misread the precedents in concluding that it lacks RICO standing. We agree that Capital has standing, and reverse.

Capital's allegations satisfy the proximate cause requirement for RICO standing. *Holmes v. Securities Investor Protection Corp.*, 112 S. Ct. 1311, 1316-18 (1992); *First Nationwide Bank v. Gelt Funding Corp.*, No. 93-7422, slip op. 4641, 4654-63 (2d Cir. June 9, 1994); *Hecht v. Commerce Clearing House. Inc.*, 897 F.2d 21, 23-24 (2d Cir. 1990). Capital alleges that defendants looted TFG "deliberate[ly] and . . . with the intent to damage [Capital] by impairing TFG's ability to pay its obligations to Capital and to TFG's other general unsecured creditors, rendering TFG insolvent, and in effect subordinating the Capital debt to CRI's purported debts when it should be CRI which is subordinated." Capital alleges that

> [a]t no time during the negotiation of the terms of issuance of the [note] . .
>
> . did . . . defendants ever disclose that, at the same time they were agreeing to cause TFG to issue the [note] . . . they were also stripping TFG of sufficient assets to meet the obligations contained in the [note]. . . . Defendants' failure to disclose their ongoing plan to strip TFG of assets was willful . . . and did cause Capital to accept delivery of the [note] . . . . Had Capital known of defendants' ongoing plan to strip TFG of assets it would not have accepted the [note], at least not without a guarantee from CRI.

Capital further alleges that defendants engaged in a "systematic campaign of looting TFG and fraudulently conveying its assets to CRI, in derogation of the rights of TFG's creditors."

Capital's allegations -- the note's timing (just after the alleged looting began) and magnitude ($500,000) and the rapacious nature of the alleged looting -- fairly posit the directness of injury required for RICO standing. *Cf. First Nationwide*, slip op. at 4657-63. When a corporation fraudulently is caused to issue debt and stripped of its assets in a manner that obviously will leave the creditors unpaid, those creditors have standing. Their injury is "reasonably foreseeable or

anticipated as a natural consequence." *Hecht*, 897 F.2d at 24; *see also Ceribelli v. Elghanayan*, 990 F.2d 62 (2d Cir. 1993): *Stochastic Decisions. Inc. v. DiDomenico*, 995 F.2d 1158 (2d Cir.), *cert. denied*, 114 S. Ct. 385 (1993); *Standardbred Owners Association v. Roosevelt Raceway Associates. L.P.*, 985 F.2d 102, 104-05 (2d Cir. 1993); *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096, 1100-01 (2d Cir. 1988), *cert. denied*, 490 U.S. 1007 (1989).

*Bankers Trust* and *Stochastic* are especially pertinent. The plaintiff in *Bankers Trust* accepted a reorganization plan unaware that the defendant had conveyed assets. The plaintiff in *Stochastic* was a judgment creditor whose collection of the debt was frustrated when the defendants stripped the judgment debtor corporation of its assets. Here, Capital allegedly accepted a litigation settlement unaware that defendants had conveyed assets, and Capital's collection was frustrated when defendants stripped TFG of its assets. Capital's claim is squarely within the compass of our past decisions regarding standing.

Defendants cite our recent decision in *Manson v. Stacescu*, 11 F.3d 1127 (2d Cir. 1993),[3] which states a general rule against creditor standing under RICO, *id.* at 1130, and compares creditors to shareholders based on the ordinarily derivative nature of injury, *id.* at 1131. *Manson* characterized *Bankers Trust* as a "narrow exception" that arose where the creditors were "forced to defend against frivolous lawsuits filed to harass them and to cause them monetary loss over and above that caused by the company's bankruptcy" and where the defendants "had made a fraudulent conveyance for the direct purpose of insulating the corporation from its creditors." *Manson*, 11 F.3d at 1130. *Cf. Wooten v. Loshbough*, 951 F.2d 768, 771 (7th Cir. 1991). Defendants here contend that Capital's injury was indirect because the looting did not specifically target Capital as opposed to other creditors.

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[3] Capital filed a brief as *amicus curiae* in support of the eventually unsuccessful appellants in *Manson*.

We are not persuaded by the citation to *Manson*. The law of RICO standing, as stated in *Bankers Trust*, distinguishes creditors from shareholders whose lack of standing to sue for wrongs to a corporation is recognized "throughout corporate law." *Bankers Trust*, 859 F.2d at 1101. The question remains one of proximate cause, which we find adequately alleged here.

Defendants contend that the appropriate remedy for a general unsecured creditor like Capital is a state court action. They surmise that Capital is in federal court only because of RICO's treble damages provision. The possibility of a state court action, however, does not preclude Capital's standing to pursue federal claims in federal court.

Defendants request that we affirm the decision of the district court even if we resolve the standing issue against them. They assert that Capital fails to allege a pattern of racketeering activity or a relationship among the predicate acts and the enterprise, fails to state a claim under §§ 1962(a), (b) or (c), and fails to plead fraud with particularity. The district court did not address these assertions because it disposed of the RICO claim on the ground of standing. We think it better for these matters to be addressed by the district court in the first instance.

We have considered defendants' remaining arguments and find them to be without merit.

Reversed and remanded for further proceedings consistent with this opinion.

*United States Court of Appeals*
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 11th day of July, one thousand nine hundred and ninety-four.

Present: HON. J. EDWARD LUMBARD,
HON. ELLSWORTH VAN GRAAFEILAND,
HON. DENNIS G. JACOBS,
Circuit Judges.

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GICC CAPITAL CORP.,

Plaintiff-Appellant,

-against-

Docket No.
93-7982

TECHNOLOGY FINANCE GROUP, INC., ANDREW GRAHAM, DENNIS WILLIAMSON, GRAHAM & WILLIAMSON, GORDON LOCKE, CREATIVE RESOURCES, INC., TFF, INC., APPLE LEASING, INC., JAMES T. PIERCE, WALTER H. PRIME, TFG ACQUISITION CORP., and ARTHUR KRONENBERG,

Defendants-Appellees.

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Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court be and it hereby is reversed and the action be and it hereby is remanded to the district court for further proceedings consistent with the opinion of this Court with costs to be taxes against the appellees.

GEORGE LANGE III, Clerk
By:

/s/

Edward J. Guardaro
Staff Attorney

**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

| | | |
|---|---|---|
| GICC CAPITAL CORP. | : | |
| V. | : | No. 5:91CV00625 (WWE) |
| TECHNOLOGY FINANCE GROUP, INC., ET AL | : | |

**RULING ON DEFENDANTS' MOTIONS TO DISMISS**

The plaintiff, GICC Capital Corporation, filed this action against defendants Technology Finance Group, Inc. ("TFG, Inc."), Arthur Kronenberg, TFG Acquisition Corporation, Creative Resources, Inc., TFF, Inc., Apple Leasing, Inc., James T. Pierce, Andrew Graham, Dennis Williamson, Graham & Williamson and Gordon Locke in September of 1991 alleging that defendants systematically looted TFG, Inc.'s assets in order to frustrate plaintiffs collection of a promissory note. Plaintiff's Amended Complaint sets forth the defendants' alleged violations in seven counts: Count I - Default on Promissory Note; Count II - Fraudulent Conveyance, Transfer of Apple Leasing, Inc./Transfer of Lease Residuals; Count III - Fraudulent Conveyance, Sale of TFG, Inc.; Count IV - Securities Fraud; Count V - Conspiracy to Commit Securities Fraud; Count VI - Violation of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(a)-(c); and Count VII - Violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. § 42-110a, *et seq*.

In August, 1993, this court adopted Magistrate Judge Arthur H. Latimer's recommended dismissal of the Amended Complaint for failure to present a federal question. It was

determined that plaintiff did not adequately plead a federal securities claim and lacked standing under RICO. Plaintiff appealed the dismissal of its RICO claim. The United States Court of Appeals for the Second Circuit reversed the denial of standing and remanded the case for further proceedings. Defendants seek to dismiss the Amended Complaint in its entirety pursuant to Fed. R. Civ. P. 12(b) (6) for failure to state a RICO claim upon which relief can be granted, and for failure to plead fraud with the particularity required by Fed. R. Civ. P. 9(b).

## I. FACTS

The factual history of this litigation has been fully set forth in the June 15, 1993 recommended ruling of former Magistrate Judge Arthur H. Latimer in connection with defendants' motions to dismiss, and in the July 11, 1994 opinion of the United States Court of Appeals for the Second Circuit, familiarity with which is presumed.

## II. STANDARD OF REVIEW

The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." *Geisler v. Petrocelli*, 616 F.2d 636, 639 (2d Cir. 1980). When determining the validity of a motion to dismiss, the court must accept all well pleaded allegations as true and draw all reasonable inferences in favor of the pleader. *Ferran v. Town of Nassau*, 11 F.3d 21, 22 (2d Cir. 1993). "[A] complaint should not be dismissed...unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

## III. DISCUSSION

The first issue presented is whether plaintiff has adequately pled the essentials of a RICO claim pursuant to 18 U.S.C. § 1962(a)-(c). In order to sufficiently state a claim under RICO a plaintiff must allege a "pattern of racketeering activity." "[T]o prove a pattern of racketeering activity a plaintiff...must

show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). Defendants contend that plaintiff has not adequately alleged a "pattern of racketeering activity" because it has failed to satisfy the continuity requirement. The court agrees.

"'Continuity' is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.... A party...may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time." *Id.* at 241, 242. Alternatively, an ongoing enterprise that threatens prolonged criminal activity will satisfy the continuity requirement. While multiple predicates within a single scheme may constitute continuous criminal activity, the continuity requirement is established only if the illegal activities have long-term consequences. *Id.* at 240-42. An enterprise that has a "short lived goal or inherently terminable nature" is not "continuous" for purposes of RICO. *Update Traffic Sys., Inc. v. Gould*, 857 F.Supp. 274, 280-81 (E.D.N.Y. 1994).

This case involves an alleged scheme to defraud a single company out of monies due on a note. While plaintiff contends that defendants committed fraudulent acts against "TFG, Inc.'s creditors" and "trust investors", the Amended Complaint fails to identify with the requisite specificity the persons or entities, other than plaintiff, that were defrauded by defendants. Plaintiff's attempt to plead "multiple victims" does not meet the requirement of Fed. R. Civ. P. 9(b) that averments of fraud be stated with particularity. *See Menasco. Inc. v. Wasserman*, 886 F.2d 681, 684 (4th Cir. 1989) (allegations that defendant committed fraud against plaintiffs and "various individuals" lacked necessary specificity to allow a finding of continuity based on multiple victim theory). Consequently, plaintiff's multiple victim allegations cannot be relied upon to show continuing racketeering activity.

Even if the court assumes that plaintiff properly alleges, to the requisite specificity required by Fed. R. Civ. P. 9(b), a fraudulent plan to loot TFG, Inc. in order to frustrate plaintiff's satisfaction of the note, there can be no finding of continuity. Such a single short-lived scheme does not denote continuous racketeering activity. Once defendants' narrowly focused goal was accomplished, i.e., when the remnant of TFG, Inc. was sold to TFG Acquisition Corporation without recourse, defendants' racketeering activity ended. Defendants' alleged illegal activities do not suggest "a distinct threat of long term racketeering activity, either implicit or explicit. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. at 242.

Furthermore, defendants' alleged fraudulent scheme does not meet the "closed-ended" variety of continuous conduct just because it spanned, at most, a two year period. While the alleged looting scheme necessitated a number of predicate acts over a determinate period of time, its short-lived goal and inherently terminable nature preclude a finding of continuity. *See Mead v. Schaub*, 757 F.Supp. 319 (S.D.N.Y. 1991) (employers alleged scheme to appropriate management consultant's client base over a period of years did not meet continuity requirement); *Terry A. Lambert Plumbing Inc. v. Western Sec. Bank*, 934 F.2d 976 (8th Cir. 1991) (alleged banking scheme to defraud contractor via deceptive loan default practices did not meet continuity requirement).

Defendants' alleged pillaging of TFG, Inc. does not constitute unlawful activity "whose scope and persistence pose a special threat to social well-being." *Int'l Data Bank. Ltd. v. Zepkin*, 812 F.2d 149, 155 (4th Cir., 1987). The court agrees with the Fourth Circuit's statement in *Menasco. Inc. v. Wasserman*, 886 F.2d at 685 (citations omitted):

> If the pattern requirement has any force whatsoever, it is to prevent this type of ordinary commercial fraud from being transformed into a federal RICO claim. If we were to recognize a RICO claim based on the narrow fraud alleged here, the pattern requirement would be rendered meaningless.

Consequently, plaintiff has failed to adequately plead a "pattern of racketeering activity" pursuant to 18 U.S.C. § 1962, *et al.*

## CONCLUSION

Plaintiff's securities fraud claims having been dismissed in an earlier opinion, its RICO claim is the sole basis for federal jurisdiction. The remainder of plaintiff's claims plead relief under state law and will not be adjudicated by this court.

For the foregoing reasons, the defendants' motions to dismiss [88] and [90] are GRANTED.

Dated this 21st day of December, 1994, at Bridgeport, Connecticut.

/s/

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**WARREN W. EGINTON**
**SENIOR UNITED STATES DISTRICT JUDGE**

**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

GICC CAPITAL CORP.

v. CIVIL NO. 5:91CV0625 (WWE)

TECHNOLOGY FINANCE GROUP, INC., et al

**J U D G M E N T**

This cause came on for consideration defendants' motion to dismiss before the Honorable Warren W. Eginton, Senior United States District Judge, and

The Court having considered the motions and all the papers submitted in connection therewith filed its Ruling on Defendants' Motions to Dismiss granting the motions,

It is therefore **ORDERED** and **ADJUDGED** that judgment be and is hereby entered in favor of the defendants and the action is dismissed, in accordance with the Court's ruling.

Dated at Bridgeport, Connecticut this 28th day of December, 1994.

KEVIN F. ROWE, Clerk

By /s/

Carol E. Cannady
Deputy in Charge

## STATUTORY PROVISIONS INVOLVED

### § 1961. Definitions

As used in this chapter —

(1) "racketeering activity" means . . .

(B) any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), . . .;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity . . . .

### § 1962. Prohibited Activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce . . . .

(b) It shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful of any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .

**§ 1964. Civil remedies**

. . .

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including reasonable attorney's fee.

18 U.S.C. §§ 1961, 1962, 1964 (1970), *as amended.*

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

| | | |
|---|---|---|
| GICC CAPITAL CORP., | : | |
| Plaintiff, | : | 5:91CV00625(WWE) |
| -against- | : | |
| TECHNOLOGY FINANCE ANDREW GRAHAM, DENNIS WILLIAMSON, GRAHAM & WILLIAMSON, CREATIVE RESOURCES, INC., TFF, INC., APPLE LEASING, INC., JAMES T. PIERCE, WALTER H. PRIME, GORDON LOCKE, TFF, INC., APPLE LEASING INC., TFG ACQUISITION CORP. AND ARTHUR KRONENBERG, | : | **AMENDED COMPLAINT** |
| Defendants. | : | |

Plaintiff GICC Capital Corp. ("GICC"), by its attorneys, Reid & Priest, for its complaint alleges as follows:

## PARTIES

1. Plaintiff GICC Capital Corp. is a corporation organized under the laws of the State of New York with its principal offices at 110 East 59th Street, New York, New York.

2. Upon information and belief, defendant Technology Finance Group, Inc. ("TFG") is or was a corporation organized under the laws of the State of Delaware with its principal offices at 49 Richmondville Avenue, Westport, Connecticut.

3. Upon information and belief, defendant Andrew Graham is a foreign national who was or is a senior executive officer of TFG and certain of the other corporate defendants, as

well as a partner in the defendant Graham & Williamson. He was, upon information and belief, intimately involved in each of the transactions complained of herein. Upon information and belief, he has returned to England to reside permanently.

4. Upon information and belief, defendant Dennis Williamson is a resident of the State of Connecticut who also was or is a senior executive officer of TFG and certain of the other corporate defendants, as well as a partner in the defendant Graham & Williamson. He was, upon information and belief, intimately involved in each of the transactions complained of herein.

5. Upon information and belief, defendant Graham & Williamson ("Graham & Williamson") is a Connecticut general partnership with its principal place of business at 468 Post Road East, Westport, Connecticut. Its general partners are, upon information and belief, the defendants Andrew Graham and Dennis Williamson. Graham & Williamson is a substantial shareholder in CRI.

6. Upon information and belief, defendant Gordon Locke was a director of and the Executive Vice-President of TFG and/or CRI and is a resident of the State of New York. He also was, upon information and belief, intimately involved in each of the transactions complained of herein. Upon information and relief, Locke resigned as a director of CRI on May 31, 1991.

7. Upon information and belief, defendant Creative Resources, Inc. ("CRI") is a corporation organized under the laws of the State of Nevada with its principal place of business at 468 Post Road East, Westport, Connecticut. CRI is the parent company of TFF and Apple, and was, indirectly through TFF, the parent company of TFG. As is set forth in greater detail below, CRI was the company to which the proceeds of certain fraudulent conveyance transactions were funnelled.

8. Upon information and belief, defendant TFF, Inc. ("TFF") is a corporation organized under the laws of the State

of Delaware with its principal offices at 468 Post Road East, Westport, Connecticut. TFF is a wholly-owned subsidiary of CRI, and as is set forth in greater detail below, it literally gave away the shares in TFG which it held after CRI had stripped TFG of its assets.

9. Upon information and belief, defendant Apple Leasing, Inc. ("Apple Leasing" or "Apple") is a corporation organized under the laws of the State of Delaware with its principal place of business at 468 Post Road East, Westport, Connecticut. Apple Leasing is also a subsidiary of CRI. At one time it was a subsidiary of TFG, but as is set forth below the defendants (other than TFF, TFG Acquisition and Arthur Kronenberg) transferred the shares of Apple from TFG to CRI for no consideration. As is set forth in greater detail below, Apple Leasing was a vehicle through which monies belonging to TFG were funnelled to CRI.

10. Upon information and belief, defendant James T. Pierce ("Pierce") is a director of CRI and is a resident of the State of Maryland. He also was, upon information and belief, involved with the fraudulent transactions described herein.

11. Upon information and belief, defendant Walter H. Prime is a foreign national who was an Executive Vice President and a director of CRI. Upon information and belief, Prime was involved with the fraudulent transactions described herein.

12. Upon information and belief, defendant TFG Acquisition Corp. ("TFG Acquisition") is a corporation under the laws of New Jersey with its principal place of business at 60 Park Place, Newark, New Jersey. TFG Acquisition acquired CRI's and TFF's shares in TFG, for no consideration, and, upon information and belief, is a shell entity with little or no assets.

13. Upon information and belief, defendant Arthur Kronenberg owns 100% of the outstanding stock of TFG Acquisition, and he is the president of TFG. As is set forth in greater detail below, Kronenberg was at one time an attorney

for TFG, and he recently acquired TFG from CRI and TFF for no consideration, in a transaction which plaintiff believes was a fraudulent conveyance and which plaintiff believes was designed to insulate CRI from previous fraudulent conveyances.

## JURISDICTION AND VENUE

14. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 (federal question), 15 U.S.C. § 78aa (Section 27 of the Securities Exchange Act of 1934) and 18 U.S.C. § 1964(c) (RICO).

15. Venue lies in the District of Connecticut pursuant to 28 U.S.C. § 1391, in that the claims alleged herein arose in the District of Connecticut, 15 U.S.C. § 78aa, in that the defendants are found, inhabit and/or transact business in the District of Connecticut, and 18 U.S.C. § 1965(a), in that the defendants reside, are found, have agents and/or transact their affairs in the District of Connecticut.

## JURY DEMAND

16. Plaintiff demands trial by jury in this action.

## NATURE OF CLAIMS

*The Business of TFG*

17. The defendant TFG was and is in the business of the leasing of data processing equipment. Its business works essentially as follows. TFG purchases a piece of computer equipment, such as an IBM 3090 mainframe computer. It borrows funds to make the purchase and it then leases the IBM computer to an initial end-user for a specified time, such as 60 months. TFG then amortizes the debt over the period of the term of the end-user lease, by directing end-user rental payments to the lender.

18. TFG then typically sold the IBM computer, in a sale-and-leaseback transaction, directly or indirectly to an investor, such as a trust. This sale-and-leaseback is subject to the initial end-user lease, which in effect becomes a sub-lease. By purchasing the equipment and then leasing it back to TFG, the

trust investor receives depreciation and other tax benefits. This lease is for a longer period than the initial end-user lease. For example, if the initial end-user lease is for 60 months, as in the example above, then the investor's lease might be for a period of 84 months.

19. When the initial end-user lease ends, TFG then typically remarkets the computer equipment, until the end of the investor's lease term. In the example referred to above, this remarketing would take place between months 60 and 84 of the investor lease. TFG collects the remarketing lease rentals (also called "residuals"), keeps an agreed-upon percentage as a fee, and is supposed to remit the balance to the investor.

20. Thus, as TFG collects lease residuals during the period from the end of the initial end-user lease to the end of the investor's lease, TFG is supposed to split the proceeds from those residuals with the equipment investors. A typical split is 65% to the investor, and 35% to TFG. From time to time, TFG and/or CRI have repurchased investor units from the various equipment trusts, which enables TFG to keep a large effective percentage of the residuals since TFG then owns the investor's interest and does not have to pay him.

21. This kind of sale-and-leaseback transaction for computer equipment was popular in the late 1970s and early 1980s. However, since the Tax Reform Act of 1986, these transactions have diminished in volume. However, many leases from the late 1970s and early 1980s are now in the remarketing phase (after the term of the initial end-user lease), and remarketing rent monies ("residuals") are flowing into TFG.

*CRI Appears on the Scene*

22. In January of 1989, CRI, through its subsidiary TFF, acquired 100% of the stock of TFG. CRI, a public company, previously had no assets other than cash, and today it is only a shell holding company which holds stock in various subsidiaries, including TFF and Apple Leasing, as well as four foreign subsidiaries. Graham, Williamson, the Graham & Williamson

partnership and Locke together own a majority of CRI's common stock. In June of 1989 Williamson became the President of CRI, and Graham and Locke became Executive Vice Presidents. Together they also constituted 75% of CRI'S board of directors, which also included defendants Pierce and Prime. Upon information and belief, CRI removed Locke as Executive-Vice President in 1991, and Locke resigned as a director of CRI on May 31, 1991.

23. Shortly after they acquired control of CRI, and its subsidiary TFG, as is set forth in greater detail below, these defendants began to engage in a systematic campaign of looting TFG and fraudulently conveying its assets to CRI, in derogation of the rights of TFG's creditors.

24. The net effect of this looting has been to leave TFG without any assets, and, in effect, insolvent, and therefore unable to repay its obligations to GICC pursuant to a promissory note between TFG and GICC.

*TFG's Default on The GICC Note*

25. TFG entered into a Stipulation of Settlement with, among others, Klondike Resources, Inc., The Leasing Equipment Group, Inc., Joel Mallin, and Equitable Leasing Co., Inc. on March 29, 1990.

26. As part of the settlement, TFG delivered a promissory note payable to GICC in the amount of $500,000 (the "GICC Note", which is annexed as Exhibit A). The GICC Note provided for interest at the rate of 10% per annum from April 1, 1990 until the date the GICC Note is paid in full.

27. In connection with the settlement agreement pursuant to which the GICC Note was issued, CRI also issued 250,000 shares of common stock to a shareholder and a business associate of GICC.

28. Under the terms of the GICC Note, TFG was to pay interest on the principal balance from January 1, 1991 until December 31, 1991. The monthly payment was to be $4,166.57.

29. From January 1, 1992 until December 31, 1995, TFG was to pay interest and principal on the GICC Note on a monthly basis, totaling $17,343.65 each month.

30. Pursuant to Paragraph 4 of the GICC Note, TFG's failure to remit any payment of principal or interest within ten days after the note's due date and TFG's further failure to cure such default within fifteen days after receipt of written notice from GICC authorized GICC to accelerate payment of the GICC Note and declare the full unpaid balance immediately due and payable.

31. TFG made its first seven interest payments in 1991 and monthly payments of principal and interest through November of 1992. However, TFG failed to remit payments on a timely basis and only upon notice and demand of payment by GICC.

32. In fact, on or about December 1, 1992, TFG formally defaulted on its payment of the GICC Note, thus entitling GICC to forward a notice of default to TFG which GICC did on December 10, 1992. This notice declared the entire balance of the GICC Note immediately due and payable. Further GICC subsequently forwarded a formal demand letter to TFG on December 28, 1992, by facsimile and by certified mail, return receipt requested. (Copies of these letters are annexed hereto as Exhibit B).

33. No payment has been made by TFG in response to GICC's notice of default or its demand letter.

34. As a result, there is now due and owing to GICC the sum of $407,021.07 with per diem interest at $110.66 from December 28, 1992.

35. In addition to this default, because of CRI's fraudulent transfers, as alleged in paragraphs 36-56 below, TFG is unable to meet its remaining payment obligations on the GICC Note.

*Defendants Have Defrauded TFG's Creditors, Including GICC, and Its Trust And Individual Investors*

36. The systematic looting of TFG by defendants Graham, Williamson, Locke, CRI and its subsidiaries and affiliates, and completed with the approval of CRI directors Pierce and Prime, and which resulted in TFG becoming insolvent, began with the collection of TFG's lease residuals on behalf of the investors, which were then fraudulently transferred to Apple Leasing or to CRI for little or no consideration. The manner in which these transactions were accomplished is quite complex, but they may be summarized as follows.

a. *The Transfer of Apply [sic] Leasing to CRI*

37. A first way in which CRI is able to loot TFG, and to cause it to be insolvent, involves Apple Leasing. Upon information and belief, at some time since June, 1989 CRI acquired several companies, including Apple Leasing. Prior to that time, Apple Leasing had been a subsidiary of TFG, and the defendants Graham, Williamson and Locke caused Apple Leasing to be transferred from TFG to CRI for no consideration. These defendants, with the knowing participation of directors Pierce and Prime, caused Apple Leasing to be transferred to CRI at a time when Apple Leasing had significant assets (derived primarily from TFG's equipment residuals), and TFG had incurred significant liabilities, including liabilities to banks, trade vendors, investors and to plaintiff.

38. While this transaction had no net effect on CRI's consolidated financial position, it deprived TFG's creditors of the Apple Leasing subsidiary as a solvent entity that they could look to for payment of their claims, and it reduced TFG's assets and caused TFG's current liabilities to exceed its remaining assets, thereby rendering TFG insolvent.

b. *The Transfer of Repurchased Investor Interests to CRI*

39. A second way in which CRI is able to loot TFG also involves using Apple Leasing as a conduit for funds from

TFG to be funnelled to CRI, in further derogation of the rights of TFG's creditors. TFG in many instances had the opportunity to purchase investor interests, and would advise the investor, by mail, and/or then by telephone, that investor's interests were worth very little. If the investor agreed to sell his interest, then TFG would mail a check, or wire transfer funds, to that investor. Thus, TFG made these purchases cheaply and it would profit to the extent remarketing proceeds from computer equipment exceeded the purchase price from the investor's interest in the equipment.

40. Graham, Williamson and Locke, with the knowing participation of directors Pierce and Prime, then caused TFG to sell the interest to Apple Leasing for TFG's purchase price, resulting in the diversion of the profit from TFG to Apple Leasing and to CRI.

41. In other instances, TFG caused Apple Leasing to purchase the investor's interests directly, by use of the mails and by wire, at a low price, diverting corporate opportunity from TFG to Apple Leasing and to CRI for no consideration, thereby further reducing TFG's assets.

42. Further, Apple Leasing caused TFG to collect these lease residuals as Apple's agent, without compensation, and caused TFG purportedly to remit those monies on Apple's behalf to CRI, which was also in derogation of the rights of TFG's creditors.

c. *The Transfer of TFG Lease Residuals To CRI To Discharge Intercorporate Debt*

43. Upon information and belief, Apple Leasing has transferred the TFG lease residuals to CRI purportedly to discharge alleged intercorporate debts from Apple to CRI, or from Apple to TFG, or from TFG to CRI.

44. Thus, as disclosed in CRI's Form 10-K for the year ending March 31, 1990, after it was transferred from TFG to CRI, Apple Leasing purchased computer residuals and entered into lease transactions from which it received lease payments, or had TFG collect the lease residuals, which were

then at times paid over to CRI. This 10-K filing, which was signed by defendants Graham, Williamson, Locke and Pierce, is described in greater detail in paragraphs 60-63 below.

45. These transactions caused CRI to be "re-paid" for alleged intercorporate obligations owed to it on a preferred basis, when at the very least CRI's claims should have been subordinated. There was no excuse for CRI to use its subsidiaries, Apple Leasing and TFG, to enable itself to be re-paid on such a preferred basis, where any "debts" owed by TFG or Apple to CRI should be subordinated to claims of general creditors of these entities. CRI may not cause its debts to be re-paid in such a preferential manner.

d. *Two Examples of the Fraud*

46. Two investor trusts which illustrate the manner in which these fraudulent transactions were accomplished are the so-called CPL and SCB trusts. In the case of CPL, for example, during 1990 TFG was repurchasing 12 of the 13 outstanding investor interests, at a time when there was a lease residual apparently due in July of 1990, on the IBM 3090 computer which was involved there, of $745,000. The investor interests were repurchased by both TFG and Apple. The total consideration paid to the 12 repurchased investor interests appears to have been only $83,000. Upon information and belief, Apple received $344,000 of the $745,000 residual payment, and the balance appears to have been paid to defendants or their affiliates.

47. In the case of SCB, approximately $800,000 was realized on the re-marketing of several different pieces of computer equipment to several different end users. Here too there were 13 trust units, of which 12 were re-purchased for a total of $4,200 cash, $3,150 in notes and $2,936.50 in stock -- or approximately $790,000 less than was actually realized. This profit was diverted to CRI and Apple or their affiliates.

48. Thus, on these two transactions above, CRI and Apple realized approximately $1,500,000 in benefits to themselves. These profits were diverted from TFG, and left the company

insolvent. These two transactions alone played a substantial role in making TFG insolvent. The transactions constituted a fraud on TFG's creditors. A computer print-out evidencing these transactions is annexed hereto as Exhibit C.

49. Based on these transactions, lease residual proceeds are funneled from TFG to CRI, in some instances through Apple Leasing, in purported discharge of obligations owed to CRI, which had the effect of leaving TFG insolvent, and unable to pay its creditors, including GICC. In addition to constituting transfers of assets for no consideration or for insufficient consideration, these transactions also resulted in the diversion of corporate and business opportunities and profits from TFG to CRI.

e. *Failure To Pay Over To Investors Their Share of TFG Lease Residuals*

50. Finally, in some instances TFG simply failed to pay over to investors their share of the residuals collected by TFG from the remarketing of computer equipment. As remarketing residual proceeds are paid to TFG, TFG is supposed to keep a certain percentage (usually 35%) as a fee, and is supposed to remit the balance to the equipment investors. Instead, in many instances TFG is simply paying the investors' share of those moneys over to CRI directly, either through the mails or by wire transfer, in purported satisfaction of intercorporate debts allegedly owed by TFG to CRI. In this fashion CRI obtains funds from TFG which otherwise would have been available to pay to TFG's equipment investors, or to TFG's other creditors.

51. Further, by failing to remit to investors their share of lease remarketing proceeds, TFG and CRI are compounding the problems faced by TFG's other unsecured creditors who may face an increased level of claims against a diminished pool of assets -- a pool of assets diminished by the funneling of funds to TFG's parent, CRI.

52. The net effect of this fraud on TFG's creditors has been the diversion and funneling by CRI of more than

$2 million in cash into CRI. As a result, TFG has been left insolvent and TFG's creditors have been left without adequate sources of repayment. The transfers have left TFG with virtually no cash since all or almost all of its cash was funneled to Apple Leasing and then to CRI, or to CRI directly, and TFG's liabilities substantially exceed its assets.

f. *Transfer of Assets Out of the Country*

53. Upon information and belief, proceeds in excess of $1 million from the transactions referred to above have been transferred to another CRI subsidiary, TALK Software Limited (f/k/a/ CCR Software Ltd.), which is located in London. Upon information and belief, defendant Graham has returned to London. Thus, while these funds are still in CRI on a consolidated financial reporting basis, it appears that defendants may be acting to make it more difficult to recover those proceeds for the benefit of GICC and TFG's other unsecured creditors by moving the proceeds offshore. At the same time that it has transferred monies out of the country, CRI "discontinued" the operations of Apple Leasing, as reported in a July, 1991 10-K filed with the SEC. (See Ex. E at p. 5).

*TFF Sells TFG to a Company Owned by Arthur Kronenberg*

54. In order to make it that much more difficult for TFG's creditors to recover from TFG, CRI's shell subsidiary, TFF, with the approval of CRI's directors, sold TFG to another company with no assets. TFF sold the stock in TFG which TFF held to TFG Acquisition, a shell company owned by a New Jersey lawyer, Arthur Kronenberg. Kronenberg had previously rendered legal services to TFG. Kronenberg's worthless entity, TFG Acquisition, purchased TFG for virtually nothing.

55. Thus, on February 5, 1991 CRI announced the sale of its subsidiary TFG for a "nominal consideration" to a

company owned by Arthur Kronenberg. (A copy of CRI's Press Release announcing the sale is annexed as Exhibit D).

56. Upon information and belief, the purpose of this transaction was to strip away TFG from CRI and to give away TFG so that (i) CRI did not have to report an insolvent subsidiary as a part of its consolidated financial statement; (ii) TFG could go bankrupt without having a direct impact on CRI; and (iii) making it that much more difficult for TFG's creditors to recover against TFG. Thus, having stripped TFG clean, the defendants set it adrift, and even caused TFG to give to CRI a non-arms length release.

*SEC Filings*

57. Defendants' fraudulent scheme is actually set forth in CRI's public filings with the SEC, albeit in a fashion which is almost impossible to understand.

58. In a July, 1991 10-K filed with the SEC, annexed as Exhibit E, CRI states in its consolidated balance sheets, that it had $1,846,000 in cash as of March 31, 1991, an increase of more than $1.3 million from March 31, 1990.

59. Upon information and belief, this sizable increase in cash is due in large part to TFG lease residuals which were funneled through Apple Leasing, and then on to CRI, and from TFG residuals which were also transferred to CRI directly.

60. Further, in its Form 10-K for the year ended March 31, 1990, which was not filed with the SEC until December 4, 1990, in a section titled "Future Outlook", CRI also stated that:

> The Company is presently meeting its working capital requirements (i) from collections by the Company from its lease portfolio, the Company borrowing funds from and deferring payment to limited partnerships managed by TFG's subsidiary, with the

> Company using these funds to pay for its operations and to repay its obligations to CRI.*

61. Upon close examination, this almost impenetrable prose reveals the defendants' looting and fraud. First, CRI stated that it is meeting its "working capital requirements from (i) collections by the Company from its lease portfolio." This means, upon information and belief, that CRI, and its subsidiary TFG, are taking lease residuals collected by TFG (on behalf of TFG's investors) and then transferring those monies either to Apple Leasing and then on to CRI, or to CRI directly, keeping those lease residuals as CRI's own and using those residuals for CRI's operating expenses rather than paying the residuals over to investors or using them to pay claims against TFG.

62. In addition, when CRI states that it is "borrowing funds from and deferring payment to limited partnerships managed by TFG's subsidiary," CRI is admitting that it is taking monies from lease residuals from TFG and Apple Leasing and not paying those monies to investors. And when CRI says it is "borrowing funds from and deferring payment to limited partnerships," that is a direct admission that CRI is taking monies from and not paying monies to investors who are entitled to them. Further, CRI is also acknowledging that it has not paid back those entities and has no plans to pay back those entities until some unknown time in the future -- really never to be paid back.

63. CRI then states that "the Company [is] using these funds to pay for its operations and to repay its obligations to CRI." This means that CRI takes the cash from TFG and Apple Leasing purportedly in exchange for the discharge of intercorporate debt owed to CRI. CRI fails to disclose that these arrangements have left TFG insolvent, with few if any assets

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* In its Form 10-K, CRI defines "the Company" as including "CRI, its subsidiaries and all affiliates of subsidiaries including ... Apple Leasing, Inc. ("Apple") and TFF and its consolidated subsidiary, TFG." (The Form 10-K for the year ending March 30, 1990 is annexed as Exhibit F, at p. 6).

to pay off its substantial remaining liabilities, and also leaves (i) TFG's creditors in a vulnerable position, and (ii) CRI in a preferred repayment position.

64. Upon information and belief, the insolvency of TFG, caused by the fraudulent transfer of assets, led CRI's certified public accountants, BDO Seidman, to issue a qualified opinion letter, dated September 7, 1990, in connection with the 1990 10-K. (See Ex. F). In its opinion letter, BDO Seidman expressed doubts about CRI's going concern capability, and stated: "Such conditions [CRI's liabilities] raise substantial doubt about the Company's ability to continue as a going concern." In its opinion letter in the July, 1991 10-K, BDO Seidman removed this qualification, and, upon information and belief, did so solely because the insolvent TFG had been removed from CRI's books.

65. CRI also restated part of this fraudulent scheme in another document recently filed with the SEC, which announced the sale of TFG to TFG Acquisition. In its Form 10-Q, annexed as Exhibit G, filed with the SEC on February 14, 1991, CRI stated:

> On February 1, 1991, a subsidiary of the Registrant, TFF, Inc. ("TFF") sold all of the Common and Series A Preferred stock of its wholly-owned subsidiary, Technology Finance Group, Inc. ("TFG") to TFG Acquisition Corp., a newly organized corporation owned by Arthur Kronenberg, Esq., an unrelated party. TFG is engaged primarily in the leasing of data processing equipment. TFG paid for the equipment with proceeds of non-recourse loans and the equipment was generally sold to equipment investors as part of sale and lease-back transactions. Although TFG was continuing to remarket the equipment from past transactions it was not entering into new transactions of the same type. Therefore, the assets of TFG primarily consisted of (i) the right to receive lease payments in the future against which TFG was obligated to pay certain of these payments to the investor

owners and (ii) certain contractual rights to remarket the equipment at the end of their existing leases.

*TFF received a nominal cash consideration for the shares of TFG.* In determining the amount of the consideration to be received, representatives of TFG negotiated with other persons as to what they would pay for the stock of TFG, taking into consideration the assets and corresponding liabilities of TFG. The only other interest shown involved terms which the Registrant deemed less advantageous to it.

* * *

The Registrant purchased certain furniture and fixtures of TFG concurrently with the sale, for an amount equal to the consideration paid by the purchaser for the shares of TFG. *Additionally, the Registrant released TFG from certain obligations of TFG to the Registrant, in exchange for a cash payment and an assignment of Registrant's interest in certain computer residuals, TFG released the Registrant from any and all claims that TFG might have against the Registrant.* (emphasis added).

66. The last paragraph of the 10-Q is crucial to understanding the fraudulent scheme. CRI, the "Registrant", released TFG from "certain obligations" of TFG to CRI (i.e., the debt exchanged when TFG transferred TFG lease residuals to CRI). CRI received cash (in an undisclosed amount) and made an assignment of CRI's "interest in certain computer residuals." CRI thus admitted in the 10-Q that it was collecting the TFG lease residuals -- which should be paid first to TFG's investors -- and purportedly obtained a release from TFG for any claims TFG may have against CRI.

67. In its July 1991 10-K for the year ending March 30, 1991, filed on July 15, 1991, CRI announced that it has "discontinued" the operations of Apple Leasing, and changed the name of CCR Software Limited to "TALK Software Limited," an English company. (See Ex. E at p. 5).

68. In its typically vague manner, CRI described the residue of the fraudulent scheme.

69. First, in its consolidated balance sheet, CRI states that it has $1,846,000 in cash as of March 31, 1991, which was an increase of almost $300,000 from December 31, 1990, and an increase of more than *$1.3 million* from March 31, 1990. (See Ex. E at p. 27).

70. In its description of its business, CRI stated:

> Domestic activities were, until recently, focused on: (i) Apple which engaged in purchasing computer residuals for cash where it anticipated realizing profits from the resale of the purchased equipment within twelve months of purchase; (ii) Columbia which engaged in originating leases for dry cleaning equipment; and (iii) TFG which managed a portfolio of computer leases. TFG was sold in February 1991 at which time Columbia and Apple also ceased developing new business.

(Ex. E at p. 6) (emphasis added).

71. In the section titled "Operating Results," CRI admitted that its "large percentage increase" in company income "resulted from the Company's increased interest income from cash balances." (Ex. E at p. 11). These "cash balances" are, of course, the monies transferred to CRI from Apple Leasing and/or TFG. There is no other plausible explanation for the large cash balances since CRI admits in this 10-K that the Company's "present continuing business, which began April 1, 1990, is considered a *new line of business* and its *revenues*, costs and expenses, are not comparable to any prior period," and this "new" line of business is "still in its formative stage." (Ex. E at p. 11) (emphasis added).

72. CRI further admitted in the 1991 10-K that the fraudulent scheme had taken place in a section titled "Liquidity and Future Outlook." (Ex. E at p. 12). In this section, CRI states in language nearly identical to the 1990 10-K:

> The Company is presently meeting its working capital requirements from (i) *collections by the Company's Apple* and Columbia subsidiaries (discontinued operations) *from their lease portfolios* (these should be considered diminishing assets and opportunities) and (ii) its cash balances.

Ex. E at p. 12. (emphasis added).

73. In CRI's Form 10-Q for the quarter ended June 30, 1991, it is clear that CRI has sent its monies abroad. (The Form 10-Q for the quarter ending June 30, 1991 is annexed as Exhibit H).

74. First, on its consolidated Balance Sheets, under the "Current Assets" column, CRI's "Cash and Cash Equivalents" has declined by almost $300,000 from March 31, 1991 to June 30, 1991, from $1,846,000 to $1,584,000. Since CRI has no active operations in the United States according to their publicly filed documents, the only explanation is that this cash has been sent abroad to CRI's foreign subsidiaries.

75. As further evidence of this shift in cash abroad, under the column titled "Stockholders' Equity" on page 3 of the Consolidated Balance Sheets, there is an entry for "Translation Gain." CRI reports an increase of $49,000 in Translation Gain from March 31, 1991 to June 30, 1991 (from $7,000 to $56,000). Upon information and belief, "Translation Gain" refers to the value of the dollar as against other currencies (like the British pound). CRI is thus reporting a profit of $49,000 in the second quarter for the value of its foreign currency holdings since the dollar has declined in value during that period. Clearly, CRI would not report any "Translation Gain" if all of its cash was still being kept in the United States. The only reasonable explanation is that CRI has funneled its monies abroad.

76. Therefore, from the descriptions in the 1991 10-K and the latest 10-Q, it is clear that CRI has collected the lease residuals from its Apple and TFG subsidiaries, which resulted in a large infusion of cash balances, has discontinued the

operations of its American subsidiaries, and has shifted its operating activities outside the United States. Since CRI no longer has active operations in this country, it is very likely that CRI has sent, and will send, its large cash balances out of the country. This is especially likely since defendants Graham and Prime reside in England, and CRI's main subsidiary, TALK Software, is also based in England. Clearly, GICC, and TFG's other creditors, will not have any recourse once CRI completes its fraudulent scheme to transfer its assets out of the country, after having stripped TFG of its assets and rendering TFG insolvent.

*Requests for Information*

77. On February 19, 1991, Joel Mallin, counsel to GICC, who did not yet know about the sale of TFG, wrote to defendant Locke, Executive Vice-President of TFG, and requested financial information about the buyer of TFG, as well as assurances that the buyer would assume TFG's obligations under the GICC Note. (The letter from Joel Mallin to Gordon Locke, dated February 19, 1991, is annexed as Exhibit I).

78. On February 27, 1991, defendant Locke, who is also on the Board of Directors of CRI, replied to Mallin. He stated that he is "no longer an Executive Vice President of Technology Finance Group, Inc. . . ." and enclosed a copy of the press release announcing the sale of TFG. (The letter from Gordon Locke to Joel Mallin, dated February 27, 1991, is annexed as Exhibit J.)

79. TFG Acquisition did not assume any of the liabilities of TFG or any other entity. On March 5, 1991, Arthur Kronenberg sent a letter to Richard Swanson, an attorney representing GICC, that, in connection with the sale of TFG, "[n]o assumption of liabilities was made. TFG was acquired along with whatever liabilities it had." (Letter from Arthur Kronenberg to Richard Swanson dated March 5, 1991, is annexed as Exhibit K).

80. Since TFG Acquisition did not assume the liabilities of TFG or anyone else, and, upon information and belief, is a

shell corporation, it will not -- and cannot -- discharge the obligations of TFG to GICC.

81. Each of the defendants was involved in the fraudulent conveyances set forth above.

(a) TFG is liable on the GICC Note and was involved in the fraudulent transfer of its lease residuals and the fraudulent transfer of its stock;

(b) CRI and TFF, like TFG, were involved in the fraudulent transfer of lease residuals and the fraudulent transfer of stock in TFG;

(c) Apple Leasing was involved in the fraudulent transfer of lease residuals;

(d) TFG Acquisition was involved in the fraudulent transfer of TFG stock;

(e) Graham & Williamson is a partnership which is a major controlling shareholder of CRI and, upon information and belief, Graham & Williamson and its agents and partners were directly involved in each of the transactions complained of herein;

(f) Andrew Graham and Dennis Williamson were or are senior executive officers, directors and/or stockholders of TFG, CRI and Apple and are the partners of the Graham & Williamson partnership;

(g) Gordon Locke is an officer, director and stockholder of CRI and, prior to its sale to TFG Acquisition, was also an officer and a principal of TFG who, upon information and belief, was directly and personally involved in each of the transactions complained of herein; and

(h) James T. Pierce and Walter H. Prime were and are officers, directors, and shareholders of CRI, and, upon information and belief, approved of the fraudulent transactions described herein.

## FIRST CAUSE OF ACTION

(Default on a Promissory Note -- Against TFG)

82. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 81 as if fully set forth herein.

83. The non-payment of the GICC Note by TFG, as described above, constitutes a default on the part of TFG.

84. By virtue of this default, there is now due and owing to GICC the amount of $407,021.07, with per diem interest of $110.66 from December 28, 1992.

## SECOND CAUSE OF ACTION

*(Fraudulent Conveyance -- Against All Defendants Except TFG Acquisition and Arthur Kronenberg -- Transfer of Apple and Lease Residuals)*

85. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 84 as if fully set forth herein.

86. The transfers of lease residuals by TFG and Apple Leasing to CRI, described above, constitute a fraudulent transfer by all the defendants as to GICC. Defendants' conduct was deliberate and made with the intent to damage plaintiff by impairing TFG's ability to pay its obligations to GICC and to TFG's other general unsecured creditors, rendering TFG insolvent, and in effect subordinating the GICC debt to CRI's purported debts when it should be CRI which is subordinated. All defendants except TFG Acquisition and Arthur Kronenberg knowingly participated in these fraudulent transactions.

87. The transfer of Apple Leasing from TFG to CRI for no consideration, which was approved by the directors of CRI, also constituted a fraudulent conveyance as to GICC, since GICC could no longer look to Apple Leasing to discharge the obligations contained in the GICC Note.

88. By virtue of the fraud, looting and deceit by all defendants, except TFG Acquisition and Arthur Kronenberg, plaintiff has been damaged by an amount of at least $407,021.07, exclusive of interest, as will be proven at trial.

89. In addition, defendants' conduct was willful and wanton and plaintiff is entitled to an award of punitive damages.

## THIRD CAUSE OF ACTION

*(Fraudulent Conveyance -- Against All Defendants -- Sale of TFG)*

90. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 89 as if fully set forth herein.

91. TFF's sale of TFG to TFG Acquisition, a company owned by Arthur Kronenberg, constitutes an additional fraudulent conveyance.

92. Defendants knew that CRI and its affiliates had stripped TFG of its assets, through the transfer of certain lease residuals out of TFG and then, directly or indirectly, into CRI, and through the transfer of the share of Apple Leasing, and thus of Apple Leasing from TFG to CRI. Upon information and belief, TFG has been rendered insolvent as a result.

93. Defendants then compounded their actions with respect to the taking of the lease residuals by transferring TFG from CRI and TFF to TFG Acquisition and Kronenberg for a nominal consideration. TFG Acquisition, however, is a shell entity with no assets, and whether it assumes TFG's liabilities, which it did not, makes no difference since TFG is now an insolvent company as a result of the fraudulent conveyances.

94. As a result of this fraudulent conveyance, TFG will be further unable to meet its obligations under the GICC Note, and GICC cannot look to TFG Acquisition to pay the Note,

except through this lawsuit, because TFG Acquisition did not assume TFG's obligations.

95. By virtue of this fraud, GICC has been damaged in an amount of at least $407,021.07, exclusive of interest, as will be proven at trial, in addition to an award of punitive damages.

## FOURTH CAUSE OF ACTION

*(Rule 10b-5 -- Against All Defendants Except TFG Acquisition and Arthur Kronenberg -- Fraud in Connection with Sale of GICC Note and Issuance of CRI Stock)*

96. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 95 as if fully set forth herein.

97. By March of 1990, when all defendants except TFG Acquisition and Arthur Kronenberg were well down the road in their fraudulent plan to strip TFG of all its available assets, such defendants caused TFG to issue the GICC Note. The issuance of the GICC Note constituted the sale of security.

98. In conjunction with the issuance of the GICC Note, all defendants except TFG Acquisition and Arthur Kronenberg, also caused CRI to issue 250,000 shares of common stock, which also constituted the sale of a security.

99. At no time during the negotiation of the terms of issuance of the GICC Note or the CRI stock did such defendants ever disclose that, at the same time they were agreeing to cause TFG to issue the GICC Note and the CRI stock, they were also stripping TFG of sufficient assets to meet the obligations contained in the GICC Note.

100. Defendants' failure to disclose their ongoing plan to strip TFG of assets was willful, and it constituted a material omission in connection with the purchase and sale of a security, which was intended and which did cause GICC to accept delivery of the GICC Note and the CRI stock on the terms set

forth therein, in settlement of certain claims. Had GICC known of defendants' ongoing plan to strip TFG of assets it would not have accepted the GICC Note, at least not without a guarantee from CRI.

101. Defendants' omission constitutes a violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j (b), and Rule 10b-5 thereunder.

102. By virtue of this fraud in the purchase and sale of a security, GICC has been damaged in an amount of at least $407,021.07, exclusive of interest, as will be proven at trial.

**FIFTH CAUSE OF ACTION**

*(Aiding and Abetting and Conspiracy to Violate Section 10(b) -- Against Defendants Graham, Williamson, Locke, Pierce and Prime)*

103. Plaintiff repeats and realleges paragraphs 1 through 102 as if fully set forth herein.

104. Defendants Graham, Williamson, Locke, Pierce and Prime are or were directors of CRI during the time the fraudulent transactions occurred. These defendants, singularly and in concert, engaged in and aided and abetted a plan, scheme and unlawful conspiracy and course of conduct, pursuant to which they knowingly and recklessly engaged in acts, transactions, practices, and courses of conduct which operated as a fraud upon plaintiff.

105. These defendants made various untrue statements of material facts in the SEC filings described in paragraphs 57-76 herein, and omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading to plaintiff.

106. These defendants knowingly and substantially assisted defendants CRI, Apple Leasing, TFG and G&W in committing the violations of Section 10-b and Rule 10b-5 set forth above, and are therefore liable as conspirators and as aiders

and abettors of such violations for the damages suffered thereby.

107. As a result of the foregoing conspiracy and aiding and abetting a violation of section 10(b), plaintiff has been damaged in an amount of at least $407,021.07, exclusive of interest, as will be proven at trial.

## SIXTH CAUSE OF ACTION

*(RICO -- Against All Defendants -- In Connection With All of the Foregoing)*

108. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 107 as if fully set forth herein.

109. Defendants have conducted the affairs of the enterprise TFG through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1962(c). Defendants' multiple fraudulent conveyances constitute a pattern of racketeering activity. Defendants' acts were anything but isolated and sporadic; they involved many transactions concerning many investors and others over a substantial and continuous period of time, and continue to this day. Each of the acts of looting and each fraudulent conveyance described herein involved multiple uses of the mails and the wires, each in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343, and each constituting a separate act of racketeering activity as defined in 18 U.S.C. § 1961(1). Defendants also engaged in fraud in the sale of securities, constituting additional acts of racketeering activity, as also defined in 18 U.S.C. § 1961(1), in connection with the issuance of the GICC Note and otherwise, including but not limited to the making of fraudulent SEC filings.

110. Plaintiff was injured in its business and property by reason of defendants' unlawful pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c), entitling plaintiff to treble damages and attorney's fees, in an amount to be proven at trial.

111. In addition, all defendants except TFG and TFG Acquisition have also violated 18 U.S.C. §§ 1962(a)-(b), by receiving income derived from, investing with proceeds derived from and maintaining an interest and control in the enterprise through the unlawful pattern of racketeering activity referred to above.

## SEVENTH CAUSE OF ACTION

*(CUTPA, etc. -- Against All Defendants -- In Connection With All of the Foregoing)*

112. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 111 as if fully set forth herein.

113. Defendants' acts violate the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. §§ 42-llOa-llOq, entitling plaintiff to actual and punitive damages in accordance with the proof at trial.

114. Defendants' acts also violate Conn. Gen. Stat. § 52-564, entitling plaintiff to treble damages in accordance with the proof at trial.

WHEREFORE, plaintiff demands judgment as follows:

(a) Awarding plaintiff compensatory damages on its First, Second, Third, Fourth and Fifth Causes of Action in the amount of at least $407,021.07, the exact amount to be proved at trial;

(b) Awarding plaintiff treble damages on its Sixth Cause of Action in the amount of at least $1,500,000;

(c) Awarding plaintiff actual, treble and punitive damages on its Seventh Cause of Action in the amount of at least $1,500,000;

(d) Awarding prejudgment interest, costs and attorney's fees;

(e) Awarding plaintiff punitive damages in an amount of at least $1,000,000 to be proven at trial; and

(f) Granting such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York
March 24, 1993

REID & PRIEST

By: /s/_____
Richard P. Swanson
Pamela C. Tames

40 West 57th Street
New York, New York 10019
(212) 603-2000

DAY, BERRY & HOWARD

By: /s/_____
Scott Moser
Craig Goldberg ct 04771

One Canterbury Green
Stamford, Connecticut 06901
(203) 977-7300

Attorneys for Plaintiff